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**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA**

MARK K. WELCH,

Plaintiff,

v.

MCNEIL & MEYERS RECEIVABLES
MANAGEMENT GROUP, LLC,

Defendant.

Case No.

COMPLAINT FOR DAMAGES

**1. VIOLATION OF THE FAIR DEBT
COLLECTION PRACTICES ACT, 15 U.S.C.
§1692 ET SEQ.**

**2. VIOLATION OF THE TELEPHONE
CONSUMER PROTECTION ACT, 47 U.S.C.
§227 ET SEQ.**

**3. VIOLATION OF THE ROSENTHAL FAIR
DEBT COLLECTION PRACTICES ACT,
CAL. CIV. CODE §1788 ET SEQ.**

DEMAND FOR JURY TRIAL

COMPLAINT

NOW comes MARK K. WELCH (“Plaintiff”), by and through his attorneys, WAJDA LAW GROUP, APC (“Wajda”), complaining as to the conduct of MCNEIL & MEYERS RECEIVABLES MANAGEMENT GROUP, LLC (“Defendant”), as follows:

NATURE OF THE ACTION

1. Plaintiff brings this action for damages pursuant to the Fair Debt Collection Practices Act (“FDCPA”) under 15 U.S.C. §1692 *et seq.*, the Telephone Consumer Protection Act (“TCPA”)

1 under 47 U.S.C. §227 *et seq.*, and the Rosenthal Fair Debt Collection Practices Act (“RFDCPA”)
2 pursuant to Cal. Civ. Code §1788 *et seq.*, for Defendant’s unlawful conduct.

3 JURISDICTION AND VENUE

4 2. This action arises under and is brought pursuant to the FDCPA and TCPA. Subject matter
5 jurisdiction is conferred upon this Court by 15 U.S.C §1692, 47 U.S.C §227, 28 U.S.C. §§1331 and
6 1337, as the action arises under the laws of the United States. Supplemental jurisdiction exists for
7 the state law claim pursuant to 28 U.S.C. §1367.

8 3. Venue is proper in this Court pursuant to 28 U.S.C. §1391 as Defendant conducts business
9 in the Eastern District of California and a substantial portion the events or omissions giving rise to
10 the claims occurred within the Eastern District of California.

11 PARTIES

12 4. Plaintiff is a consumer over-the-age of 18 residing in Fresno County, California, which is
13 located within the Eastern District of California.

14 5. Plaintiff is a “person,” as defined by 47 U.S.C. §153(39).

15 6. Defendant promotes itself as “one of the most highly respected collection agencies in the
16 south.”¹ Defendant is a limited liability company organized under the laws of the State of Louisiana.
17 Defendant’s principal place of business is located at 3525 N. Causeway Blvd., Suite 833, Metairie,
18 Louisiana 70002. Defendant regularly collects from consumer in the State of California.

19 7. Defendant is a “person” as defined by 47 U.S.C. §153(39).

20 8. Defendant acted through its agents, employees, officers, members, directors, heirs,
21 successors, assigns, principals, trustees, sureties, subrogees, representatives and insurers at all times
22 relevant to the instant action.

23 FACTS SUPPORTING CAUSES OF ACTION

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28 ¹ <http://mcneilmeyers.com/Services.html>

1 9. Several months ago, Plaintiff obtained a personal loan from NetCredit to purchase of
2 household and other consumer goods and/or services.

3 10. Due to financial hardship, Plaintiff fell behind on his scheduled payments to NetCredit,
4 thus incurring debt ("subject debt").

5 11. Thereafter, NetCredit placed the subject debt with Defendant for collection.

6 12. Around April 2019, Plaintiff began receiving calls to his cellular phone, (559) XXX-9450,
7 from Defendant.

8 13. At all times relevant to the instant action, Plaintiff was the sole subscriber, owner, and
9 operator of the cellular phone ending in -9450. Plaintiff is and always has been financially
10 responsible for the cellular phone and its services.

11 14. Defendant has primarily used the phone number (800) 571-4396 when placing collection
12 calls to Plaintiff's cellular phone, but upon belief, Defendant has used other numbers as well.

13 15. Upon information and belief, the above-referenced phone number ending in -4396 is
14 regularly utilized by Defendant during its debt collection activities.

15 16. During answered phone calls from Defendant, Plaintiff has experienced a significant
16 pause, lasting several seconds in length, before being connected with a live representative.

17 17. Upon speaking with Defendant, Plaintiff was informed that Defendant is a debt collector
18 attempting to collect upon the subject debt.

19 18. Plaintiff informed Defendant of his intent to file for bankruptcy and demanded that it stop
20 contacting him.

21 19. Furthermore, Plaintiff also provided Defendant with his bankruptcy counsel's contact
22 information.

23 20. Despite Plaintiff's demands, Defendant continued to place phone calls to Plaintiff's
24 cellular phone seeking collection of the subject debt.

1 21. Plaintiff has received not less than 25 phone calls from Defendant since asking it to stop
2 calling.

3 22. Moreover, on at least one occasion, Defendant mocked Plaintiff for his decision to file for
4 bankruptcy.

5 23. Frustrated over Defendant's conduct, Plaintiff spoke with Wajda regarding his rights,
6 resulting in expenses.

7 24. Plaintiff has been unfairly and unnecessarily harassed by Defendant's actions.

8 25. Plaintiff has suffered concrete harm as a result of Defendant's actions, including but not
9 limited to, invasion of privacy, aggravation that accompanies collection telephone calls, emotional
10 distress, increased risk of personal injury resulting from the distraction caused by the never-ending
11 calls, increased usage of his telephone services, loss of cellular phone capacity, diminished cellular
12 phone functionality, decreased battery life on his cellular phone, and diminished space for data
13 storage on his cellular phone.
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16 **COUNT I – VIOLATIONS OF THE FAIR DEBT COLLECTION PRACTICES ACT**

17 26. Plaintiff repeats and realleges paragraphs 1 through 25 as though full set forth herein.

18 27. Plaintiff is a "consumer" as defined by 15 U.S.C. §1692a(3) of the FDCPA.

19 28. Defendant is a "debt collector" as defined by §1692a(6) of the FDCPA, because it regularly
20 use the mail and/or the telephone to collect, or attempt to collect, delinquent consumer accounts.
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22 29. Defendant identifies itself as a debt collector, and is engaged in the business of collecting
23 or attempting to collect, directly or indirectly, defaulted debts owed or due or asserted to be owed
24 or due to others.

25 30. The subject debt is a "debt" as defined by FDCPA §1692a(5) as it arises out of a transaction
26 due or asserted to be owed or due to another for personal, family, or household purposes.
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28 **a. Violations of FDCPA §1692c and §1692d**

1 31. The FDCPA, pursuant to 15 U.S.C. §1692c(a)(2), prohibits a debt collector from
2 “communicat[ing] with a consumer in connection with the collection of a debt if the debt collector
3 knows the consumer is represented by an attorney...”

4 32. Defendant violated c(a)(2) when it continued to contact Plaintiff, despite having knowledge
5 that Plaintiff was represented by an attorney.

6 33. The FDCPA, pursuant to 15 U.S.C. §1692d, prohibits a debt collector from engaging “in
7 any conduct the natural consequence of which is to harass, oppress, or abuse any person in
8 connection with the collection of a debt.” §1692d(5) further prohibits, “causing a telephone to ring
9 or engaging any person in telephone conversation repeatedly or continuously with intent to annoy,
10 abuse, or harass any person at the called number.”

11 34. Defendant violated §1692c(a)(1), d, and d(5) when it repeatedly called Plaintiff after being
12 notified to stop. Defendant called Plaintiff at least 25 times after he demanded that it stop calling.
13 This repeated behavior of systematically calling Plaintiff’s phone in spite of his demands was
14 harassing and abusive. The frequency and nature of calls shows that Defendant willfully ignored
15 Plaintiff’s pleas with the goal of annoying and harassing him.

16 35. Defendant was notified by Plaintiff that its calls were not welcomed. As such, Defendant
17 knew that its conduct was inconvenient and harassing to Plaintiff.

18 36. The FDCPA, pursuant to 15 U.S.C. §1692d(2), forbids “[t]he use of obscene language or
19 language the natural consequence of which is to abuse the hearer or reader.”

20 37. Defendant violated §1692d and d(2) when it mocked Plaintiff for his decision to file for
21 bankruptcy. Any reasonable fact finder will conclude that Defendant’s goal was to harass Plaintiff
22 in order to forcefully extract payment from him.

23 **b. Violations of FDCPA § 1692e**
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1 38. The FDCPA, pursuant to 15 U.S.C. §1692e, prohibits a debt collector from using “any false,
2 deceptive, or misleading representation or means in connection with the collection of any debt.”

3 39. In addition, this section enumerates specific violations, such as:

4 “The use of any false representation or deceptive means to collect or attempt to
5 collect any debt or to obtain information concerning a consumer.” 15 U.S.C.
6 §1692e(10).

7 40. Defendant further violated §1692e and e(10) when it used deceptive means to collect and/or
8 attempt to collect the subject debt. In spite of the fact that Plaintiff demanded that Defendant stop
9 contacting him, Defendant continued to contact him via automated calls. Instead of putting an end
10 to this harassing behavior, Defendant systematically placed calls to Plaintiff’s cellular phone in a
11 deceptive attempt to force him to answer its calls and ultimately make a payment. Through its
12 conduct, Defendant misleadingly represented to Plaintiff that it had the legal ability to contact him
13 via an automated system when it no longer had consent to do so.

14
15 **c. Violations of FDCPA § 1692f**

16 41. The FDCPA, pursuant to 15 U.S.C. §1692f, prohibits a debt collector from using “unfair or
17 unconscionable means to collect or attempt to collect any debt.”

18 42. Defendant further violated §1692f when it unfairly and unconscionably attempted to collect
19 on a debt by continuously calling Plaintiff at least 25 times after being notified to stop. Attempting
20 to coerce Plaintiff into payment by placing voluminous phone calls without his permission is unfair
21 and unconscionable behavior. These means employed by Defendant only served to worry and
22 confuse Plaintiff.

23
24 WHEREFORE, Plaintiff, MARK K. WELCH, respectfully requests that this Honorable Court
25 enter judgment in his favor as follows:

- 26 a. Declaring that the practices complained of herein are unlawful and violate the
27 aforementioned bodies of law;
28

- b. Awarding Plaintiff statutory damages of \$1,000.00 as provided under 15 U.S.C. §1692k(a)(2)(A);
- c. Awarding Plaintiff actual damages, in an amount to be determined at trial, as provided under 15 U.S.C. §1692k(a)(1);
- d. Awarding Plaintiff costs and reasonable attorney fees as provided under 15 U.S.C. §1692k(a)(3);
- e. Enjoining Defendant from further contacting Plaintiff; and
- f. Awarding any other relief as this Honorable Court deems just and appropriate.

COUNT II – VIOLATIONS OF THE TELEPHONE CONSUMER PROTECTION ACT

43. Plaintiff repeats and realleges paragraphs 1 through 42 as though fully set forth herein.

44. The TCPA, pursuant to 47 U.S.C. § 227(b)(1)(iii), prohibits calling persons on their cellular phone using an automatic telephone dialing system (“ATDS”) *or* pre-recorded messages without their consent. The TCPA, under 47 U.S.C. § 227(a)(1), defines an ATDS as “equipment which has the capacity...to store or produce telephone numbers to be called, using a random or sequential number generator; and to dial such numbers.”

45. Defendant used an ATDS in connection with its communications directed towards Plaintiff’s cellular phone. The significant pause, lasting several seconds in length, which Plaintiff has experienced during answered calls is instructive that an ATDS was being utilized to generate the phone calls. Additionally, Defendant’s continued contacts to Plaintiff after he demanded that the phone calls stop further demonstrates Defendant’s use of an ATDS. Moreover, the nature and frequency of Defendant’s contacts points to the involvement of an ATDS.

46. Defendant violated the TCPA by placing at least 25 phone calls to Plaintiff’s cellular phone using an ATDS without his consent. Any consent that Plaintiff *may* have given to the originator of the subject debt, which Defendant will likely assert transferred down, was specifically revoked by Plaintiff’s demands that it cease contacting him.

1 47. The calls placed by Defendant to Plaintiff were regarding collection activity and not for
2 emergency purposes as defined by the TCPA under 47 U.S.C. §227(b)(1)(A)(i).

3 48. Under the TCPA, pursuant to 47 U.S.C. § 227(b)(3)(B), Defendant is liable to Plaintiff for
4 at least \$500.00 per call. Moreover, Defendant's willful and knowing violations of the TCPA
5 should trigger this Honorable Court's ability to triple the damages to which Plaintiff is otherwise
6 entitled to under 47 U.S.C. § 227(b)(3)(C).

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8 WHEREFORE, Plaintiff, MARK K. WELCH, respectfully requests that this Honorable Court
9 enter judgment in his favor as follows:

- 10 a. Declaring that the practices complained of herein are unlawful and violate the
11 aforementioned statutes and regulations;
- 12 b. Awarding Plaintiff damages of at least \$500.00 per phone call and treble damages
13 pursuant to 47 U.S.C. §§ 227(b)(3)(B)&(C);
- 14 c. Awarding Plaintiff costs and reasonable attorney fees;
- 15 d. Enjoining Defendant from further contacting Plaintiff; and
- 16 e. Awarding any other relief as this Honorable Court deems just and appropriate.

17 **COUNT III – VIOLATIONS OF THE ROSENTHAL FAIR DEBT COLLECTION PRACTICES ACT**

18 49. Plaintiff restates and realleges paragraphs 1 through 48 as though fully set forth herein.

19 50. Plaintiff is a "person" as defined by Cal. Civ. Code § 1788.2(g).

20 51. The subject debt is a "debt" and "consumer debt" as defined by Cal. Civ. Code § 1788.2(d)
21 and (f).

22 52. Defendant is a "debt collector" as defined by Cal. Civ. Code § 1788.2(c).

23
24 **a. Violations of RFDCPA § 1788.10 – 1788.17**

25 53. The RFDCPA, pursuant to Cal. Civ. Code § 1788.17 states that "Notwithstanding any other
26 provision of this title, every debt collector collecting or attempting to collect a consumer debt shall
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28

1 comply with the provisions of Section 1692b to 1692j, inclusive of, and shall be subject to the
2 remedies in Section 1692k of, Title 15 of the United States Code.”

3 54. As outlined above, through its continuous attempts to collect upon the subject debt,
4 Defendant violated 1788.17; and §§1692c, d, e, and f. Defendant engaged in a harassing, deceptive
5 and unconscionable campaign to collect from Plaintiff through the implicit misrepresentations
6 made on phone calls placed to Plaintiff’s cellular phone. Through its conduct, Defendant
7 misleadingly represented to Plaintiff that it had the lawful ability to continue contacting his cellular
8 phone using an automated system absent his consent. Such lawful ability was revoked upon
9 Plaintiff demanding that Defendant stop calling his cellular phone, illustrating the deceptive nature
10 of Defendant’s conduct. In violation of Plaintiff’s rights, Defendant continued contacting Plaintiff
11 even after knowing that he was represented by an attorney.
12

13 55. Defendant willfully and knowingly violated the RFDCPA through its egregious collection
14 efforts. Defendant’s willful and knowing violations of the RFDCPA should trigger this Honorable
15 Court’s ability to award Plaintiff statutory damages of up to \$1,000.00, as provided under Cal. Civ.
16 Code § 1788.30(b).
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18 WHEREFORE, Plaintiff, MARK K. WELCH, respectfully requests that this Honorable Court
19 enter judgment in his favor as follows:
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- 21 a. Declare that the practices complained of herein are unlawful and violate the aforementioned
22 statute;
- 23 b. Award Plaintiff actual damages, pursuant to Cal. Civ. Code § 1788.30(a);
- 24 c. Award Plaintiff statutory damages up to \$1,000.00, pursuant to Cal. Civ. Code §
25 1788.30(b);
- 26 d. Award Plaintiff costs and reasonable attorney fees as provided pursuant to Cal. Civ. Code
27 § 1788.30(c);
- 28 e. Enjoining Defendant from further contacting Plaintiff; and
- f. Award any other relief as the Honorable Court deems just and proper.

Dated: January 27, 2020

Respectfully submitted,

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